IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

CRP.No. 1601 of 2001(C)

OS.148/1990 of PRL.SUB COURT,THRISSUR DT.29.6.2001.

REVN. PETITIONERS: ADDITIONAL DEFENDANTS 10, 11 & 13.

1. **KUSUMALATHA RAMAKRISHNAN,**
   W/O.RAMAKRISHNAN,
   KARICHANDATCH HOUSE, ENGANDIYOOR,
   CHAVAKKAD TALUK, THRISSUR DIST.

2. **PRAKASAN, S/O.LATE RAMAKRISHNAN,**
   KARICHANDATCH HOUSE, ENGANDIYOOR,
   CHAVAKKAD TALUK, THRISSUR DISTRICT.

3. **MALLIKA,**
   W/O.CHANDRASEKHARAN, KAKKANAD HOUSE,
   P.O.KUNDALYOOR, THRISSUR.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS/PLAINTIFFS & DEFENDANTS 1,2 & 4 TO 9 & 12.

1. **THRITHALLUR DEVASWOM,**
   REP.BY THE DEVASWOM TRUST-
   COMMITTEE, CHAIRMAN & MANAGING-
   TRUSTEE, KOCHUNNY KAIMAL,
   VDANAPALLY AMSOM, CHAVAKKAD TALUK,
   THRISSUR DIST.

2. **THRITHALLUR SIVAKSHETHARA SAMRAKSHANA SAMITHI,**
   A. REGD. SOCIETY,
   (REG. NO.101 OF 1984) REP.BY ITS PRESIDENT,
   K.BHASKARAN NAIR, VADANAPPILLY AMSOM,
   CHAVAKKAD TALUK, THRISSUR DISTRICT.

3. **SMT.SARADA BALAKRISHNAN ALIAS SARADA AMMA,**
   D/O.VAZHATHODUTH KOCHUKUTTY AMMA,
   VADANAPPILLY P./O., THRITHALLUR , TRICHUR DIST.

4. **K.V.SADANANDAN, S/O.KOLLARA VELAYUDHAN,**
   EDATHURUTHY AMSOM KODUNGALLUR TALUK,
   THRISSUR DISTRICT.

5. VADANAPPILLY SERVICE CO-OPERATIVE SOCIETY,
NO.211, REP.BY ITS SECRETARY.

6. THE DIRECTOR OF PUBLIC INSTRUCTION,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

7. THE SECRETARY,
THE GENERAL EDUCATION OF KERALA GOVT.,
THIRUVANANTHAPURAM.

8. THE REGISTRAR OF CO-OP. SOCIETIES, BEHIND
SECRETARIAT BUILDINGS, THIRUVANANTHAPURAM.

9. THE DIRECTOR OF SOCIAL WELFARE,
THIRUVANANTHAPURAM.

10. THE HEADMASTER,
KAMALA NEHRU MEMORIAL HIGH SCHOOL,
VATANAPPILLY P.O. THRITHALLUR, THRISSUR DISTRICT.

11. VALSAN,
S/O.LATE RAMAKRISHNAN,
KARICHANDATCH HOUSE, ENGANDIYOOR,
CHAVAKKAD TALUK , THRISSUR DIST.

ADDL.R12 IMPLEADED.

C.HARIDASA KAIMAL, S/O.AMMALU NETHYAR,
RESIDING AT VELLUR CHEMPARAMBATH,
VENKITANGU VILLAGE, CHAVAKKAD TALUK.

IMPLEADED AS ADDL.R1 AS PER ORDER DT.15.9.06 IN CMP. 4494/01.

BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
GOVERNMENT PLEADER SMT.BINDU R.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/05/2007, ALONG WITH CRP NO. 1611 OF 2001 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. Nos.1601 & 1611 OF 2001

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Dated this the 24th day of May, 2007

O R D E R

The challenge in these revision petitions is against the order of the Civil Court in not referring the matter to the Land Tribunal for adjudication of the tenancy right as contemplated under Section 125 of the Kerala Land Reforms Act.

2. The case of the defendants is to the effect that plaint A schedule property was leased in favour of one Velayudhan by the then Uralans in the year 1935. So far as B schedule property is concerned, they have obtained lease during the year 1947 and they claim tenancy right. Learned counsel for the revision petitioners strongly contends before me that in any event his clients are entitled to get protection under Sections 7 and 7B of the K.L.R.Act. It is submitted by him that even if the person who had granted the lease does not have any right by virtue of the provisions under Section 7 and 7B of the Act, it protects the rights of the tenants and they will be entitled to fixity of tenure under the Act.

3. On the contra, learned senior counsel Sri.S.V.Balakrishna Iyer

submits that such a contention is not seen raised in the application and also his clients have not been able to precisely meet that point. It is further contended that there is a bar under Section 29 of the Hindu Religious and Charitable Endowments Act, 1951 because a lease without the sanction of the Commissioner is invalid. It is true that both these leases are admittedly even prior to the original implementation of the Hindu Religious and Charitable Endowments Act, 1951. So in order to specifically consider under which provision of the Land Reforms Act the defendants are claiming tenancy over the property, there must be sufficient pleadings and I feel that it will only enable the other side to meet that argument. Since particulars are lacking , I feel it is only just and proper to permit the contesting defendants in the suit to amend that petition incorporating proper pleadings by virtue of which they claim tenancy over the property and also enable the plaintiffs in the suit to file a counter statement and also raise the contention regarding the incompetency or voidance of the transaction. The court below will have to consider the question of reference afresh after hearing both sides. Therefore, the impugned orders in these C.R.Ps. are set aside and the matter is sent back to the trial court for fresh disposal in accordance with the directions given in the previous paragraph.

Parties are directed to appear before the trial court on 27.6.2007.

C.R.Ps. are disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-